

The Flinn Report

Illinois

Regulation

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Joint Committee on Administrative Rules

Illinois General Assembly

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

CONSUMER LOANS

INSTALLMENT

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments for rules titled "Consumer Installment Loan Act" (38 Ill Adm Code 110), effective 7/7/06, to repeal regulations applicable to mortgage lending and short-term, non-title-secured loans. Such regulations are now covered under other DFPR rules. Also, numerous nonsubstantive changes reflect that several prior agencies were combined to create DFPR. Changes since 1st Notice clarify that "short-term loan" and "title-secured loan" refer to the same thing.

Questions/requests for copies: Barb Smith, DFPR, 320 W. Washington, Springfield IL 62786, 217/785-0813, Fax 217/782-7645.

ST. POLICE CAR BONDS

CAPITAL DEVELOPMENT BOARD repealed an emergency amendment made to rules titled "Bonding Guide-

lines" (71 Ill Adm Code 50), effective 7/10/06. The emergency amendment being repealed became effective 6/13/06 and was published in the 6/30/06 issue of the *Illinois Register* to expand the definition of "durable moveable equipment" to include newly purchased, specialized purpose Illinois State Police vehicles. Thus, general obligation bond proceeds could be used to purchase such police vehicles. The rulemaking also specifically required that bonds issued to finance State Police vehicles mature within 5 years. In accordance with a recommendation issued by the Attorney-General and the availability of alternative funding sources, the Board decided not to use general obligation bond proceeds to fund purchase of ISP special purpose vehicles. Thus, the emergency rulemaking is not needed.

Questions/requests for copies: Frederick W. Hahn, CDB, 401 S. Spring St., 3rd Fl., Springfield IL 62706, 217/782-0700, e-mail: Frederick.hahn@illinois.gov.

Proposed Regulations

SCHOOL GRANTS

The STATE BOARD OF EDUCATION proposed a new Part titled "Grants for Arts Education and Foreign Language Education" (23 Ill Adm Code 265) that implements a portion of Public Act 94-835 (the Fiscal Year 2007 Budget Implementation (Education) Act). The statute requires SBE and the Illinois Arts Council to cooperate in administering and awarding grants to public schools to be used to support arts and foreign language education, with an emphasis on ensuring that art and foreign language are available as part of the school's core curriculum. The proposed rules set out the grant program elements: eligible applicants (school districts, public university laboratory schools, area vocational centers, and charter schools); request for proposal (RFP) application procedures; allocation of funding; program specifications for one-year planning grants and three-year implementation grants; and criteria for reviewing these applications. Eligible applicants may apply for one planning grant and one implementation grant in each of the two curricular areas.

(cont'd next page)

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of *The Flinn Report* or the *Illinois Register* will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

Proposed Regulations

Questions/requests for copies/comments until 9/5/06: Sally Vogl, SBE, 100 N. First St. (S-493), Springfield IL 62777, 217/782-5270, e-mail: rules@isbe.net

WOMEN'S HEALTH GRANTS

The DEPARTMENT OF PUBLIC HEALTH proposed amendments for rules titled "Penny Severns Breast and Cervical Cancer Research Fund Rules" (77 Ill Adm Code 970) to implement Public Acts 94-119 and 94-120. PA 94-119 renamed the Penny Severns Breast and Cervical Cancer Research Fund to include ovarian cancer. PA 94-120 created the Ticket for the Cure, a special instant scratch-off lottery game. The net profit generated from this game will be deposited into the Ticket for the Cure Fund and appropriated solely to DPH to make grants to Illinois public or private entities for the purpose of funding research concerning breast cancer and also funding services for breast cancer victims. The rulemaking includes grant eligibility and application requirements and provides direction regarding how entities may use grants funds. Addi-

tionally, DPH renames the Part to "Women's Health Code", updates and adds definitions, and includes a reference section listing applicable federal and State statutes and rules. Those affected by this rulemaking include physicians, hospitals, laboratories, educational institutions, and other organizations desiring to apply for research grants. Also affected are service providers for breast cancer victims (e.g., local health departments).

Questions/requests for copies/comments until 9/5/06: Susan Meister, DPH, 535 W. Jefferson, 5th Fl., Springfield IL 62761, 217/782-2043, e-mail: rules@idph.state.il.us

HORSE RACING

The ILLINOIS RACING BOARD proposed amendments for "Medication" (11 Ill Adm Code 603) making its rules governing the permitted use of foreign substances consistent with model rules of the Assn. of Racing Commissioners International. The rulemaking sets penalties based on a tiered structure for use of specified non-steroidal

anti-inflammatory drugs above prescribed threshold levels, absent mitigating circumstances. It adds 1 antibacterial and 3 anti-protozoal drugs to the list of foreign substances that may be present in horses participating in a race. It also strikes the requirement that all samples be retained by the lab for the maximum period permitted by available storage facilities and strikes the prohibition against destruction of samples without IRB approval when storage facilities become unavailable.

Questions/requests for copies/comments until 9/5/06: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

Note to Reader: The editor apologizes to George Sisk for misspelling his name in the 7/7/06 *Flinn Report*. At least when someone calls the Department on Aging legal department and asks for Mr. Fisk, George will know the source of that person's information.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's August 8, 2006 meeting in Chicago.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147) proposed 1/27/06 (30 Ill Reg 1255)

STATE UNIVERSITIES RETIREMENT SYSTEM

"State Universities Civil Service System" (80 Ill Adm Code 250) proposed 1/6/06 (30 Ill Reg 108)

JCAR Meeting Action

At its July 11, 2006 meeting, the Joint Committee on Administrative Rules voted the 7 Objections, 3 Filing Prohibitions, one Recommendation, and one Notice of Failure to Remedy below. Also, consideration of amendments to the Department of Transportation's rulemaking titled "Control of Outdoor Advertising Adjacent to Primary and Interstate Highways" (92 Ill Adm Code 522; 30 Ill Reg 6125) was extended for 45 days, and the rulemaking will be considered at the August 8, 2006 meeting.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

The Committee objects to, and prohibits the filing of, amendments to rules titled "Consumer Installment Loan Act" (38 Ill Adm Code 110; 30 Ill Reg 2449). DFPR's application of Payday Loan Reform Act restrictions to Consumer Installment Loan Act licensees is not specifically authorized by statute and contravenes the General Assembly's intent in creating the Payday Loan Reform Act, the Consumer Installment Loan Act, and the Illinois Wage Assignment Act. This significant violation of statute poses a threat to the public interest.

Concerning amendments for rules titled "Real Estate License Act of 2000" (68 Ill Adm Code 1450; 29 Ill Reg 17959), DFPR expanded the prohibition against deceptive and misleading advertising of real property in a manner that could confuse a buyer about the permitted use of that property, e.g., advertising property zoned for single-family occupancy in any way that suggests multi-dwelling use. At its 5/9/06 meeting, JCAR objected because the rulemaking lacks clarity in regard to what constitutes the prohibited advertising. In its 6/8/06 response, DFPR refused to amend the rulemaking in response to the Objection, stating it will adopt the rulemaking as it was submitted to JCAR at 2nd Notice. Therefore, the Committee will publish a Notice of Failure to Remedy in the *Illinois Register*.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

JCAR objects to, and prohibits the filing of, amendments to "Licensing Standards for Day Care Homes" (89 Ill Adm Code 406; 29 Ill Reg 18180) and "Licensing Standards for Group Day Care Homes" (89 Ill Adm Code 408; 29

Ill Reg 18207). The rulemakings lack clarity, which threatens the public interest in that applicants/licensees and the families they serve could be adversely economically impacted. At the June JCAR meeting, discussions with DCFS personnel suggested that the Department was unclear about the relationship between State licensure and the authority of local fire prevention agencies and whether the role of the State and local authorities is clearly and accurately described in the proposed rulemakings. Since that meeting, DCFS has provided no further information to clarify this dichotomy. As a result, adoption of the rulemakings constitutes a potential threat to the interest and welfare of applicants and licensees, as they could be misled about operating requirements and be negatively impacted. The general public could also be impacted by any resulting unavailability of child care options.

DEPARTMENT OF AGRICULTURE

JCAR objects to the Department's rulemaking titled "Livestock Auction Markets" (8 Ill Adm Code 40; 30 Ill Reg 713) because, by allowing livestock testing positive for brucellosis at market to be returned to their point of origin, the rulemaking conflicts with Section 5 of the Illinois Bovine Brucellosis Eradication Act and with 8 Ill. Adm. Code 85.40 (Diseased Animals). If the Department believes that allowing these animals to be returned to the point of origin is advisable, it should seek an amendment to the statute allowing this option.

Concerning amendments to "Diseased Animals" (8 Ill Adm Code 85; 30 Ill Reg 737), the Committee objects to the Department of Agriculture enforcing policy not in rule by requiring for over a year that dog breeders and veterinarians report canine brucellosis, a

disease not listed by DOA as reportable, and by requiring that dog breeders meet specified criteria for release from quarantine without statutorily required rules.

HEALTH FACILITIES PLANNING BOARD

The Committee objects to "Health Facilities Planning Procedural Rules" (77 Ill Adm Code 1130; 29 Ill Reg 16173) because HFPB failed to review its rules and promulgate amendments before 12/31/04, as required by Public Act 93-41. JCAR also objects to Section 1130.640 of the rulemaking that allows DPH to extend by 60 days the 120-day time limit on its review of a permit request. Section 8 of the Illinois Health Facilities Plan Act [20 ILCS 3960/8] allows only the permit applicant, not DPH, to seek an extension of the statutory 120-day cap on the review period. If HFPB believes more time is needed for these reviews, it should seek a statutory change.

DEPARTMENT OF PUBLIC HEALTH

Concerning the lack of DPH rules for stem cell grants, JCAR objects to the DPH awarding grants to medical research facilities for stem cell research without adopting rules addressing eligibility requirements, application procedures, monitoring criteria, and other general program standards. The grant process affects individuals outside the Department; thus, rulemaking is required under the Illinois Administrative Procedure Act.

STATE FIRE MARSHAL

The Committee recommends that the Fire Marshal immediately adopt emergency rules to implement the Elevator Safety and Regulation Act program and take all measures necessary to make this program workable.

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